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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 74 (CM)

5 IBRAHIM ISSA,

6 Trial

7 Defendant.

-----x

8 New York, N.Y.  
9 December 18, 2018  
10 10:15 a.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

NOAH SOLOWIEJCZYK

17 ELIZABETH HANFT

KYLE WIRSHBA

18 Assistant United States Attorneys

19 BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant

20 BY: BENJAMIN BRAFMAN

JOSHUA D. KIRSHNER

21 STUART GOLD

22 ALSO PRESENT: ANTHONY DUBAR, Special agent USPS-OIG  
23 GRACE SOTO, Special agent IRS  
24 COLLEEN GEIER, Paralegal Specialist USAO  
25 PRIYA KUARLALL PRASAD, Paralegal

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1 (Trial resumed; jury not present)

2 THE DEPUTY CLERK: Case on trial continued.

3 Government and defendant present, jurors are not present.

4 THE COURT: As you see, I don't command the kind of  
5 audience that you people do.

6 Okay. Let's do it.

7 MR. SOLOWIEJCZYK: Your Honor, while we are waiting  
8 for the jury, we had taken up the issue of the postal rules,  
9 the addition to the charge.

10 THE COURT: Yes, and I edited your suggestion.

11 MR. SOLOWIEJCZYK: We don't have a copy.

12 THE COURT: You don't have a copy?

13 THE DEPUTY CLERK: They will have a copy in a second.  
14 You might as well relax, it will be a couple minutes.

15 MR. BRAFMAN: Your Honor, could we be heard for one  
16 moment on this before the jury comes out?

17 THE COURT: Case on trial continued, the parties are  
18 present, the jurors are not present.

19 MR. BRAFMAN: Your Honor, the instruction that I have  
20 just been given on U.S. Postal Service rules terms of contract  
21 is generally acceptable but I would ask that your Honor add a  
22 sentence at the end that you may not find the defendant guilty  
23 of any of the crimes charged simply because you may have found  
24 him to have violated a postal rule.

25 THE COURT: I think I said that in the first sentence.

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1 I never want to say anything twice.

2 MR. BRAFMAN: Note my objection, your Honor.

3 THE COURT: Thank you.

4 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning.

3 THE JURY: Good morning.

4 THE COURT: We are going to have to wait for Mr. Issa.

5 I apologize about the lunch ordering, by the way. GSA  
6 just terminated our cafeteria contract so they have no  
7 incentive to stock for their last week in operation so they  
8 have no food. So, we had to go outside.

9 Okay, you can put your pens down. You are actually  
10 going to have copies of the charge back in the jury room with  
11 you. Okay? So, just listen.

12 Ladies and gentlemen of the jury, now that you have  
13 heard all the evidence in the trial and the arguments made by  
14 counsel, it becomes my duty to give you final instructions  
15 about the law that's applicable to the case and that will guide  
16 you in your decision making. All of the instructions of law  
17 that I have given you throughout the trial, at the beginning of  
18 the trial, a few during the trial, and these final  
19 instructions, must guide and govern your deliberations. It is  
20 your duty as jurors to follow the law as stated in all of my  
21 instructions and to apply these rules of law to the facts as  
22 you find them to be from the evidence that was received during  
23 the trial.

24 Counsel have referred to some of the applicable rules  
25 of law in their closing arguments. Remember that if what

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1 counsel said about the law differs from what I tell you about  
2 the law, are you to follow the instructions given by the Court.  
3 You are not to focus on any single instruction, you have to  
4 consider my charge as a whole in reaching your decision, and  
5 you must not be concerned with the wisdom of any rule of law  
6 that I give you, regardless of any opinion that you may have  
7 about what the law ought to be. It would be a violation of  
8 your sworn duty to base any part of your verdict on any view or  
9 opinion about the law other than the one I'm going to give you  
10 in these instructions, just as it would be a violation of your  
11 sworn duty as judges of the facts to base your verdict on  
12 anything other than the evidence that was received in the case.

13 Now, as I told you at the beginning of trial, the  
14 indictment is not evidence. That's why you haven't seen it.  
15 It's not evidence. It merely describes the charges that are  
16 brought against the defendant. An indictment is simply a  
17 formal method of bringing a case in to court for trial and  
18 determination by a jury. You may draw no inference of any kind  
19 from the fact that an indictment was handed down. Under our  
20 law, a person who has been accused of a crime is presumed to be  
21 innocent, therefore you must not consider the fact that the  
22 defendant was accused of crimes in an indictment as evidence of  
23 his guilt.

24 The fact that the prosecution is brought in the name  
25 of the United States of America entitles the government to no

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1 greater consideration than you would accord to any other party.  
2 By the same token, the government is entitled to no less  
3 consideration. In your deliberations you are to perform your  
4 duty without bias or prejudice either to the government or to  
5 the defendant. Remember that all parties, government, and  
6 individuals alike, stand as equals before this court of  
7 justice.

8 In this criminal case the burden has been, at all  
9 times, on the government to prove every element of the crimes  
10 charged. That burden never shifted to the defendant. What did  
11 that mean? That the defendant had no obligation to prove  
12 anything or call or cross-examine any witnesses or to offer any  
13 evidence. You and I, as the judges of the fact and the law,  
14 respectively, are presuming the defendant to be innocent so he  
15 has nothing to prove. The government must convince you that  
16 the presumption is wrong before you can find otherwise and the  
17 government can only convince you that the presumption is wrong  
18 if it proves beyond a reasonable doubt all of the elements of  
19 the crimes charged in the indictment. Nothing more and nothing  
20 less.

21 So, the question that naturally arises is what is a  
22 reasonable doubt? Well, it's a doubt that's based on reason  
23 and common sense that would cause a reasonable person to  
24 hesitate to act in a matter of importance in his or her  
25 personal life. Proof beyond a reasonable doubt is proof of

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1 such a convincing character that a reasonable person would not  
2 hesitate to rely and act upon it in the most important of his  
3 or her own affairs.

4 Now, a doubt is not reasonable if it's based on  
5 Caprice or whim or on speculation or suspicion, or if it is the  
6 product of sympathy. And a doubt that you dream up as an  
7 excuse to avoid the performance of an unpleasant duty is not a  
8 reasonable doubt. A doubt is only reasonable if you arrive at  
9 it based on the evidence or on your conclusion that there is a  
10 lack of evidence.

11 You will find the fact from one thing only. The  
12 evidence. The evidence in this case consists of the sworn  
13 testimony of the witnesses, of all of the exhibits that have  
14 been received regardless of which side introduced them, and all  
15 facts that may have been agreed to or stipulated which you are  
16 to regard as proved. And some of the those things that were  
17 stipulated were stipulations of testimony -- if called as a  
18 witness, so and so would have said such and such. You are to  
19 accept that the witness would have said those things on the  
20 witness stand.

21 Now, nothing I have said during this trial is  
22 evidence. Nothing any of the lawyers have said is evidence.  
23 The questions they asked by themselves are not evidence. The  
24 objections that they made are not evidence. If I sustained an  
25 objection to a question, you have to disregard the question.

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1 If I ordered testimony stricken -- and I think I did that once  
2 or twice -- you must forget that it was ever said.

3 Now, please understand I am neutral in this matter. I  
4 do not decide the issues of fact in this case. That job is  
5 yours and I leave it to you. My function was simply to get the  
6 trial concluded as fairly and as promptly as possible -- I  
7 apologize that it wasn't as prompt as I thought it would be --  
8 and to explain the law to you. The decision in the case is  
9 yours so don't get any idea that I have a view or an attitude  
10 about what your verdict should be. I do not. Your verdict  
11 will be my verdict.

12 In making your evidence-based findings you are  
13 permitted to draw reasonable inferences from the facts that  
14 have been proved from the testimony and the exhibits.  
15 Inferences are simply deductions or conclusions that reason and  
16 common sense lead you to draw from the evidence received in the  
17 case. You should consider the evidence at this trial in the  
18 same way that any reasonable and careful person would treat any  
19 very important question that involves facts and opinions and  
20 evidence to support them. You are expected to use your good  
21 sense in considering and evaluating the evidence in the case  
22 only for the purposes for which it has been received and to  
23 give that evidence a reasonable and fair construction in light  
24 of your common knowledge of the natural tendencies and  
25 inclinations of human beings.



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1 I remind you there are two types of evidence that you  
2 may properly consider in deciding whether the defendant has  
3 been proved guilty or whether he is not guilty. One type of  
4 evidence is called direct evidence.

5 Direct evidence is evidence given by a witness who  
6 testified about what she saw, heard, observed of her own  
7 knowledge acquired by virtue of her five senses.

8 Circumstantial evidence is direct evidence of one fact  
9 that tends to give rise to an inference of another fact. The  
10 simple example of circumstantial evidence that is often used in  
11 courts, assume that when you came into the court house this  
12 morning the sun was shining -- as, indeed, it is shining right  
13 now -- and it is a nice day, but let's assume there actually  
14 are no windows in this courtroom so we can't see outside, and  
15 this building is soundproof so we can't hear outside, so we  
16 would have no way of knowing whether the weather had changed.  
17 But if, as we sit here this morning, people arrive, having  
18 business with the Court and they walk into the room and they're  
19 carrying wet umbrellas and their hair is plastered down on  
20 their heads, we would have no direct evidence that the weather  
21 had changed but we would have direct evidence that it looked  
22 like those people had come in from out of the rain. From that  
23 we could conclude, we could draw the inference, that the  
24 weather had changed. So, the appearance of the people is  
25 circumstantial evidence of a change in the weather. Okay?

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1 That's all circumstantial evidence is, you infer from an  
2 established fact the existence or the nonexistence of some  
3 other fact on the basis of your reason, experience, and common  
4 sense.

5 Now, circumstantial evidence is of no less value than  
6 direct evidence and it is a general rule that the law makes no  
7 distinction between direct and circumstantial evidence. It  
8 simply requires that before you convict a defendant you, the  
9 jury, must be satisfied of his guilt beyond a reasonable doubt  
10 from all of the evidence in the case.

11 Now, recordings of telephone conversations, text  
12 messages and e-mails have been admitted into evidence. I  
13 instruct you that this evidence was obtained in a lawful manner  
14 and no one's rights were violated and the government's use of  
15 this evidence is entirely lawful. Therefore, regardless of any  
16 personal opinion or feelings that you might have about how that  
17 evidence was obtained, you should give it full consideration,  
18 along with all the other evidence in the case as you decide  
19 whether the government has proved the defendant's guilt beyond  
20 a reasonable doubt. What weight you give to these materials,  
21 if any, is completely within your discretion.

22 The government also introduced evidence in the form of  
23 video/audio tape recordings of conversations between the  
24 defendant and others. The use of these tape recorded  
25 conversations is also perfectly lawful. Both parties were

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1 entitled to use the tape recordings in this case. Whether you  
2 approve or disapprove of the recording of conversations or  
3 meetings may not enter into your deliberations. So, regardless  
4 of any personal opinions you may have about how this evidence  
5 was gathered, you should give it full consideration, along with  
6 all the other evidence in the case as you determine whether the  
7 government has proved beyond a reasonable doubt the guilt of  
8 the defendant.

9 For several of the recordings you were provided with  
10 simultaneous transcriptions on your monitors to assist you. I  
11 remind you the transcriptions are not evidence and that's true  
12 of all those transcripts that you had as well. The transcripts  
13 and transcriptions were provided as an aid to you while you  
14 listened to or watched the recordings. It is for you to decide  
15 whether the transcriptions correctly present the conversations  
16 as they are heard on the recordings. And if you perceive any  
17 difference between the recording and the transcription, it's  
18 what you hear on the recording that controls.

19 Now, among the evidence we received in evidence we  
20 have a few documents that have been redacted. What that means  
21 is part of the document has been blacked out. Material can be  
22 redacted for any number of reasons including that I decided it  
23 was not relevant to the issues you have to decide in the case,  
24 or that it invades the privacy of a third-party, or there are a  
25 whole variety of reasons why we could redact information. You

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1 are not to concern yourself with why a document was redacted,  
2 you are only to concern yourself with the part of the item that  
3 was admitted into evidence.

4 You, the jurors, will be the sole judges of the  
5 credibility -- the believability -- of the witnesses. And you  
6 will give the weight that their testimony deserves. You may be  
7 guided in your assessment by the appearance and the conduct of  
8 a witness or by the manner in which he or she testified, or by  
9 the character of the testimony that's given, or by evidence you  
10 find to be believable that's contrary to the testimony that was  
11 given.

12 You should carefully scrutinize all the testimony that  
13 you heard, the circumstances under which each witness  
14 testified, and every matter in evidence that might tend to show  
15 whether a witness' testimony is worthy of belief. Consider  
16 each witness' intelligence, motive, state of mind, and demeanor  
17 or manner while on the stand. Consider the witness' ability to  
18 observe the matters about which he or she testified and whether  
19 he or she impresses you as having an accurate recollection of  
20 those matters. Consider any relation that each witness may  
21 bear to either side of the case, the manner in which each  
22 witness might be affected by the verdict, and the extent to  
23 which, if at all, each witness' testimony is supported or  
24 contradicted by other evidence in the case.

25 Now, inconsistencies or discrepancies within the

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1 testimony of a witness may cause you to discredit that person's  
2 testimony, or may not. So may inconsistencies between witness  
3 no. 1 and witness no. 2. But inconsistencies do not  
4 necessarily indicate that someone is lying. Two or more  
5 persons who witness an incident or a transaction may see or  
6 hear it differently. An innocent misrecollection, like failure  
7 of recollection, is not an uncommon experience. So, in  
8 weighing the effect of a discrepancy, consider whether it  
9 pertains to a matter of importance or to an unimportant detail  
10 and whether you believe it results from innocent error or  
11 intentional falsehood. After making your own judgment, you  
12 should give the testimony of each witness such weight, if any,  
13 as you think it deserves.

14 Now, you heard evidence that a witness at some earlier  
15 point in time made an out-of-court statement that was  
16 inconsistent with what the witness said during the trial.  
17 Statements made by witnesses in the past are not the evidence  
18 in the case. The evidence in the case is what the witness says  
19 from the witness stand. So, why do lawyers ask witnesses if  
20 they make specific statements at some earlier point in time?  
21 Well, they do it because if the witness told a different story  
22 in the past, that might help you to decide whether to believe  
23 the witness' trial testimony. It is for you to decide whether  
24 a witness' prior statement actually conflicts with his trial  
25 testimony. Sometimes lawyers see conflicts where jurors do

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1 not. If you decide there is a conflict between what a witness  
2 said on some prior occasion and what he or she told you at  
3 trial, you may consider the fact that there is an inconsistency  
4 as you decide whether you believe what the witness told you  
5 here at trial. You may not consider the contents of the prior  
6 statement for their truth or substitute the prior inconsistent  
7 statement for the trial testimony even if what the witness said  
8 in the past seems more believable to you. The prior  
9 statement's only relevance lies in assessing whether you  
10 believe what the witness said here at the trial.

11 Let me give you a silly example to illustrate the  
12 point. Let's assume that the government has to prove beyond a  
13 reasonable doubt the color of a car that was involved in a car  
14 crash. Suppose a witness testified here at trial the car was  
15 blue, and suppose that on cross-examination opposing counsel  
16 confronted the witness with a statement he made to the police  
17 on the night of the accident in which he said the same car was  
18 gray. You may, if you wish, consider the fact of that  
19 inconsistency, the fact that the witness told different stories  
20 at different times as bearing on his credibility. You may not,  
21 however, decide that the car was gray but the witness said so  
22 on an earlier occasion. That's because the prior statement was  
23 not admitted to prove the truth of the matter asserted, the  
24 color of the car. The only evidence before you about the color  
25 of the car is that it's blue. Either you believe the witness,

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1 you believe what he said here in court, or you don't.

2 In making your credibility determination you should  
3 consider whether the witness purposefully made a false  
4 statement or whether it was an innocent mistake, whether the  
5 inconsistency concerns an important fact or has to do with a  
6 small detail whether the witness had an explanation for the  
7 inconsistency and whether that explanation appealed to your  
8 common sense.

9 It is your duty, based on all the evidence and your  
10 own good judgment, to determine whether the prior statement was  
11 inconsistent and, if so, how much, if any weight, to give to  
12 the fact of the inconsistency as you decide whether you believe  
13 all or part of what the witness said to you here at trial.

14 Now, the government must sometimes rely on the  
15 testimony of witnesses who admit to participating in crimes and  
16 who agree to cooperate in the hope of he receiving leniency at  
17 sentencing. There is nothing wrong with the government's use  
18 of cooperating witnesses so you may consider the testimony of  
19 such witnesses.

20 In federal court, the testimony of a single  
21 cooperating witness may be enough to satisfy you of the  
22 defendant's guilt beyond a reasonable doubt. However,  
23 cooperating witness testimony should be scrutinized with great  
24 care and viewed with particular caution when you decide how  
25 much of it to believe. You are allowed to consider the fact

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1 that a witness is cooperating with the government and is hoping  
2 for leniency as you decide whether or not you believe that  
3 witness' testimony. It does not follow that a person who has  
4 admitted to participating in crimes is incapable of giving  
5 truthful testimony. Like the testimony of any other witness,  
6 cooperating witness testimony should be given such weight as it  
7 deserves in light of all the facts and circumstances taking  
8 into account the witness' demeanor and candor, the strength and  
9 accuracy of his recollection, his background, and the extent to  
10 which the testimony is or is not corroborated by other evidence  
11 in the case.

12           You also heard testimony about agreements between the  
13 government and the cooperating witness. It is no concern of  
14 yours why the government made an agreement with anyone. Your  
15 sole concern is whether the witness has given truthful  
16 testimony here in this courtroom before you. That said, when  
17 you are determining a witness' credibility, you may consider  
18 the existence of the agreement and any effect that you think it  
19 had on the witness' truthfulness. In evaluating the testimony  
20 of cooperating witnesses, you should ask yourselves whether  
21 that person would benefit more by lying or by telling the  
22 truth. Was the witness' testimony made up in any way because  
23 the witness believed or hoped that he would somehow receive  
24 favorable treatment by testifying falsely? Or did the witness  
25 believe that his interests would be served best by testifying



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1 truthfully?

2 If you believe that a witness is motivated by the hope  
3 of personal gain, was the motivation one that would cause the  
4 witness to lie, or was it one that would cause him or her to  
5 tell the truth? And, did the motivation actually color the  
6 witness' testimony? If you find that the testimony of the  
7 cooperating witness was false, you should reject it. However,  
8 if, after cautious and careful examination of the cooperating  
9 witness' testimony and that witness' demeanor on the stand, you  
10 are satisfied that the witness told the truth, you are free to  
11 accept his testimony as credibility and act on it accordingly.

12 Mr. Velez, the cooperating witness in this case,  
13 pleaded guilty to charges arising out of the same facts that  
14 are at issue in this case. You may not draw any conclusion or  
15 inference of any kind about the guilt of the defendant from the  
16 fact that Mr. Velez pleaded guilty to similar charges. The  
17 decision of any person to plead guilty is a personal decision  
18 that I made about his own guilt. Nobody else's plea is  
19 evidence against Mr. Issa. So, you may not consider or draw  
20 any conclusion about Mr. Issa's guilt based on the fact that  
21 the cooperating witness pled guilty.

22 You heard testimony from two witness -- Sohail Butt  
23 and Claudia Betancourt -- who testified under a grant of  
24 immunity that was conferred by the Court. The testimony of a  
25 witness testifying pursuant to a grant of immunity may not be

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1 used against that witness in any criminal case except in a  
2 prosecution for perjury, if giving false statements in  
3 connection with testimony.

4           There is nothing wrong with the government's eliciting  
5 testimony from a witness who has been granted immunity to  
6 testify and a defendant may be convicted on the basis of such  
7 witness' testimony alone provided, of course, the jury  
8 concludes that the witness' testimony proves the defendant  
9 guilty beyond a reasonable doubt. That said, you should  
10 scrutinize the testimony of a witness who has been granted  
11 immunity with great care. You must decide whether or not it is  
12 colored in such a way as to place guilt upon the defendant in  
13 order to further the witness' own interests, or such a witness  
14 confronted with the realization that he could avoid being  
15 charged with a crime by helping to convict another, has a  
16 motive to testify falsely. However, if you believe the  
17 testimony to be true and determined to accept the testimony,  
18 you may give it such weight, if any, as you believe it  
19 deserves.

20           You have heard testimony from witnesses whom the  
21 government has promised in exchange for testifying truthfully,  
22 completely, and fully, will not be prosecuted for any crimes in  
23 which they may have participated. Again, the fact that the  
24 government has agreed not to prosecute a witness does not  
25 disqualify him from testimony or from testifying and does not

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1 preclude you from accepting that testimony as true because the  
2 government is permitted to make these kinds of promises called  
3 non-prosecution agreements, and it is entitled to call as  
4 witnesses people to whom such promises are made. The fact that  
5 the government has agreed not to prosecute a witness does not  
6 disqualify him or her from testifying. And, we don't need to  
7 say that twice.

8           You are instructed that you may convict the defendant  
9 on the basis of such a witness' testimony if you find that his  
10 or her testimony proves the defendant guilty beyond a  
11 reasonable doubt. So, in evaluating the testimony of witnesses  
12 who are testifying pursuant to non-prosecution agreements, you  
13 may want to consider whether the witness would benefit more by  
14 lying or telling the truth. If you believe the witness is  
15 motivated by personal gain, was the motivation one that would  
16 cause him to lie or one that would cause him to tell the truth?  
17 Again, if you find the testimony to be false, you should reject  
18 it and if you are satisfied that the witness told the truth,  
19 you should accept it.

20           One final note. As I have said before, it is no  
21 concern of yours why the government made any kind of agreement  
22 with a witness. Your sole concern is deciding whether the  
23 testimony that was given by that witness was truthful and you  
24 should look to all the evidence in the case in deciding what  
25 credence and what weight, if any, you will give to a witness'

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1 testimony.

2 I will say that somewhere else, I am trying not to say  
3 things two or three times.

4 You have heard evidence during the trial that the  
5 witnesses have discussed the facts of the case and their  
6 testimony with the lawyers before they appeared in court.  
7 There is nothing either unusual or improper about a witness'  
8 meeting with lawyers -- in this case the government lawyers --  
9 before testifying. It happens all the time. That way the  
10 witness can be aware of the subjects he will be questioned  
11 about, focus on those subjects, and have the opportunity to  
12 review relevant exhibits before being questioned about them.  
13 Such consultation helps conserve your time and the Court's.  
14 The weight that you give to the fact that a witness prepared  
15 for his or her testimony, if any, is a matter entirely within  
16 your discretion.

17 Now, if you find that any witness testified falsely  
18 about some material fact, the law permits you to disregard  
19 everything that the witness said on the stand. Put otherwise,  
20 if someone lies to you about a fact that you deem to be  
21 important to this case, you can just throw out that witness'  
22 entire testimony on the ground that someone who lies to you  
23 about one important thing cannot be trusted, at all. However,  
24 the issue of credibility need not be decided in an all or  
25 nothing fashion. You may accept as much of a witness'

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1 testimony as you think is true and disregard whatever you feel  
2 is false. It's entirely up to you how you treat the testimony  
3 of such a witness.

4           There is no legal requirement that the government  
5 prove its case through any particular means so while you are to  
6 consider carefully the sufficiency of the evidence introduced  
7 by the government, you are not to speculate about why it used  
8 the techniques that it did or why it did not use other  
9 techniques. The government is not on trial and law enforcement  
10 techniques are not your concern. Your concern is to determine  
11 whether or not, on the evidence or lack of evidence, the guilt  
12 of the defendant has been proved beyond a reasonable doubt.

13           Now, Mr. Issa did not testify in this case. Under our  
14 Constitution, a defendant has no obligation to testify or to  
15 present evidence because it is the government's burden to prove  
16 the defendant guilty beyond a reasonable doubt and that burden  
17 remained with the government throughout the entire trial, it  
18 has never shifted to the defendant. Just remember that. A  
19 defendant is never required to prove that he is innocent. So,  
20 you may not attach any significance to the fact that the  
21 defendant did not testify. You may not draw any adverse  
22 inference against Mr. Issa because he did not take the witness  
23 stand. You may not consider this against the defendant in any  
24 way in your deliberations in the jury room. You should put the  
25 fact that he did not testify entirely out of your mind. It's

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1 irrelevant.

2 In reaching your decision as to whether the government  
3 has sustained its burden of proof, it would be improper for you  
4 to consider any personal feelings you might have about the  
5 defendant's race, religion, national origin, sex, age, or  
6 station in life. It would be equally improper for you to allow  
7 any feelings you might have about the nature of the crimes  
8 charged to interfere with your decision-making process. Any  
9 sort of bias, prejudice, or sympathy for or against either side  
10 has no relevance to the matter before you and may not be  
11 considered by you in reaching your verdict.

12 You also may not draw any inference, favorable or  
13 unfavorable, toward the government or the defendant from the  
14 fact that any person other than the defendant is not on trial  
15 here. You may not speculate about the reason why other people  
16 are not on trial. Those matters are wholly outside your  
17 concern. They have no bearing on your function as jurors.  
18 This is Mr. Issa's day in court.

19 Finally, the question of what punishment the defendant  
20 might incur if he is convicted is of no concern to the jury and  
21 so it should not enter into or influence your deliberations.  
22 The duty of imposing sentence rests exclusively with me. Your  
23 function is to tell me whether I have to exercise that duty by  
24 weighing the evidence and determining whether the defendant has  
25 been proved guilty beyond a reasonable doubt solely on the

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1 basis of that evidence.

2 Stand up, stretch.

3 Now, are you being asked to consider a total of eight  
4 separate charges. Counts One and Two charge the defendant with  
5 bribery of a federal official and theft of government funds,  
6 respectively. Count Three charges the defendant with  
7 conspiracy to commit various tax offenses. And, Counts Four  
8 through Eight charge the defendant with actually committing  
9 various substantive tax crimes.

10 You must consider each count separately and you must  
11 return a separate verdict of guilty or not guilty on each  
12 count. I have a verdict sheet. If you need any reinforcement  
13 for this you have to have a verdict on Count One, a verdict on  
14 Count Two, a verdict on Count Three. You consider each one  
15 separately. And when I say "each one separately," what I mean  
16 is your verdict on Count One doesn't determine what your  
17 verdict is on Counts Two, Three, and Four. All right? Your  
18 verdict on Count One is your verdict on Count One. Then you  
19 will consider the evidence on Count Two. So, whether you find  
20 the defendant guilty or not guilty as to any one charge should  
21 not affect your verdict on the other offenses that are charged.

22 Now, I plan to charge you first on the law of bribery  
23 and theft of government funds in connection with Counts One and  
24 Two. Then we will actually take a break. Then you will come  
25 back, then I'm going to jump over Count Three, which is the

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1 conspiracy count, and talk to you about the law that relates to  
2 the substantive tax offenses that are charged in Counts Four  
3 through Eight and then I will charge you last on conspiracy.

4 So, the first count charges the defendant with the  
5 crime of bribery of a federal official. In order to find the  
6 defendant guilty of that crime, the government has to prove  
7 three elements beyond a reasonable doubt. The first element  
8 that the government must prove beyond a reasonable doubt is  
9 that the defendant offered, promised, or gave money or  
10 something else of value to one or more of the following  
11 individuals: United States Postal Service Vehicle Maintenance  
12 Facility managers James Nicholson, Jeffrey Blight, or Ismael  
13 Velez. The item of value that was offered, promised or given  
14 can consist of money or something else of value such as meals,  
15 travel, property, services, other items that have value.

16 The bribery statute makes no distinction between  
17 offering, promising, and giving a bribe. All are crimes. The  
18 mere offer or prompts of a bribe is just as much of a violation  
19 of the statute as the actual giving.

20 The second element that the government must prove  
21 beyond a reasonable doubt that any of the three United States  
22 Postal Service Vehicle Maintenance Managers -- James Nicholson,  
23 Jeffrey Blight and Ismael Velez -- were public officials. The  
24 term "public official" means a member of Congress or an officer  
25 or employee or person who is acting for or on behalf of the



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1 United States, or any department, agency, or branch of the  
2 United States government in any official function under or by  
3 the authority of any such department, agency, or branch of  
4 government. So, the term public official includes any employee  
5 of the United States Government, as well as any person who is  
6 performing work for or acting on behalf of the United States  
7 government.

8 The third element that the government must prove  
9 beyond a reasonable doubt is that the defendant gave, promised,  
10 or offered the money or the thing of value with the corrupt  
11 intent to influence an official act that was to be taken by  
12 that public official. Corrupt intent means having an improper  
13 motive or purpose, it involves conscious wrongdoing by the  
14 defendant or, as it has sometimes been expressed, that the  
15 defendant had a bad or an evil state of mind.

16 Now, bribery of a public official does not occur if a  
17 person simply gives a thing of value to a public official  
18 merely as an effort to curry amorphous favor or obtain  
19 generalized goodwill from a public official who has been or may  
20 at some unknown time be in a position to act favorably on the  
21 donor's interest. That describes lobbying and lobbying is  
22 legal.

23 Corrupt intent in this context means an intent by the  
24 defendant to engage in a *quid pro quo*, a Latin phrase meaning  
25 this for that, or these for those. A specific intent to give

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1 or receive something of value in exchange for an official act.  
2 The agreement need not be explicit and the public official need  
3 not specify the means that he will use to perform his end of  
4 the bargain. You do not need to find that the defendant's  
5 intent was entirely corrupt. If you find that the government  
6 has proven beyond a reasonable doubt that the defendant  
7 provided USPS officials with payments, the defendant may be  
8 found to have the requisite corrupt intent even if he possessed  
9 a dual intent. That is partly corrupt and partly innocent. A  
10 valid purpose like friendship that partially motivates a  
11 payment does not insulate the defendant from an unlawful  
12 transaction if any part of his motivation was corrupt.

13 But, by the same token, the government must prove  
14 beyond a reasonable doubt that some part of the defendant's  
15 motive was corrupt. In considering this element, remember that  
16 it is the defendant's intent to influence the public official's  
17 actions, not the subsequent actions of the public official  
18 that's important. So, the government does not have to prove  
19 that the public official accepted the bribe or that he  
20 performed the act sought, or that the official ever intended to  
21 perform the act sought. Moreover, this element may be  
22 satisfied even if the public official would have taken the same  
23 official act if he never got a bribe or even if the public  
24 official did not take the official fact that was sought.

25 Similarly, this element would be satisfied even if the

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1 action taken by the public official was a desirable action or  
2 one that was beneficial to the public. A bribe is unlawful  
3 even if the public official would have and should have taken,  
4 in the public interest, the same action for which the bribe was  
5 offered or paid.

6 Now, I have used the term official act a number of  
7 times. An official act means any decision or action on any  
8 question or matter that may, at any time, be pending or that  
9 may, by law, be brought before any public official in his  
10 official capacity or place of trust. The term official act  
11 includes the decisions or actions that are generally expected  
12 of a public official. These decisions or actions do not need  
13 to be specifically described in any law, rule, or job  
14 description to be considered an official act.

15 Now, not every action taken by a public official  
16 qualifies as an official act. Some examples of actions that  
17 are not official acts are setting up a meeting, talking with a  
18 lobbyist or another official, organizing an event, expressing  
19 support for an idea. Without more, those kinds of activities  
20 do not constitute official acts, although such activity may be  
21 evidence of an agreement to take official acts or to advise or  
22 pressure another official to do so.

23 An official act must involve a decision, an action, or  
24 an agreement to make a decision or to take action on a specific  
25 matter. A decision or action may include using one's official

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1 position to exert pressure on or to order someone else to  
2 perform an official act. It may also include using one's  
3 official position to provide advice to another knowing or  
4 intending that such advice will form the basis for an official  
5 act by another. The decision or action must be made on a  
6 question or matter that involves a formal exercise of  
7 governmental power. This means the question or matter must be  
8 specific, focused, and concrete, the kind of thing that could  
9 be put on an agenda and then checked off as complete. It must  
10 be something that may, by law, be brought before a public  
11 official or may, at some time, be pending before that public  
12 official. The government does not have to prove that at the  
13 time of the payment the public official promised to perform the  
14 particular act. It is sufficient that the defendant intended  
15 that the public official would, as a result of the payment,  
16 take official acts as specific opportunities arose.

17 Okay, that's Count One.

18 Count Two charges that the defendant engaged in theft  
19 of government funds by fraudulently billing the United States  
20 Postal Service for vehicle repair maintenance and towing work  
21 that was not actually performed, billing the USPS for vehicle  
22 maintenance work that was not necessary and had not been  
23 requested, and billing the USPS more than once for the same  
24 work.

25 There are four elements to this charge that the

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1 government must prove beyond a reasonable doubt. The first  
2 element that the government must prove beyond a reasonable  
3 doubt is that money or property that the defendant Issa  
4 received from the USPS belonged to the United States  
5 government. Now, there isn't any dispute in this case that the  
6 money that Issa's companies received from the USPS as a result  
7 of their vehicle repair maintenance and towing work on USPS  
8 vehicles qualifies as money belonging to the United States.  
9 You don't have to deliberate on that element.

10 The second element the government must prove beyond a  
11 reasonable doubt is that the defendant stole or knowingly  
12 converted money or property belonging to the United States  
13 government. To steal money or property means to take someone  
14 else's money or property without the owner's consent with the  
15 intent to deprive the owner of the value of that money or  
16 property.

17 To knowingly convert money or property means to use  
18 the property in an unauthorized manner in a way that seriously  
19 interferes with the government's right to use and control its  
20 own property knowing that the property belonged to the United  
21 States and that such use was unauthorized. To act knowingly  
22 means to act intentionally and voluntarily, not because of  
23 ignorance, mistake, accident, or carelessness.

24 The third element the government must prove beyond a  
25 reasonable doubt under Count Two is that the defendant acted

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1 knowingly and willfully with the intent to deprive the  
2 government of the use and benefit of its property. Again, to  
3 act knowingly means to act intentionally and voluntarily, not  
4 because of ignorance, mistake, accident, or carelessness.

5 To act willfully means to act with the knowledge that  
6 one's conduct is unlawful and with the intent to do something  
7 that the law forbids. That is to say with a bad purpose, to  
8 disobey or to disregard the law. Whether the defendant acted  
9 knowingly and willfully may be proven by the defendant's  
10 conduct in all of the circumstances of the case.

11 The fourth and final element that the government must  
12 prove beyond a reasonable doubt for Count Two is that the value  
13 of the property stolen from the government, here the funds that  
14 were paid by the USPS to Mr. Issa's companies for vehicle  
15 repair maintenance and towing work that the government alleges  
16 was either not performed or not authorized, was greater than  
17 \$1,000. In determining the value of property stolen you may  
18 consider the aggregate or the total value of the property  
19 referred to in Count Two. If you find that the aggregate value  
20 is \$1,000 or less, then you must find the defendant not guilty  
21 on Count Two. On the other hand, if you find the aggregate  
22 value to be greater than \$1,000, then this element is  
23 satisfied.

24 Okay. I would like to take a short break, a  
25 five-minute break. All right? But to get you up moving out so

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1 I can clear my head before we go on to the tax stuff which I  
2 find to be a little more complicated.

3 So, don't discuss the case, keep an open mind.

4 (Continued on next page)

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1 (Jury not present)

2 THE COURT: I have a question. Does the jury -- I  
3 think the jury has to be unanimous on which official was  
4 bribed, right? That isn't in this charge and I think I need to  
5 tell them that.

6 MR. SOLOWIEJCZYK: Can we have one moment, your Honor?

7 THE COURT: Yes. I don't think if six of them think  
8 it was this one and six of them think it was that one that  
9 that's enough.

10 (Counsel conferring)

11 MR. SOLOWIEJCZYK: If you could give us five minutes,  
12 your Honor, we are going to check.

13 THE COURT: That's why we are having a five-minute  
14 break.

15 MR. SOLOWIEJCZYK: Of course.

16 (recess)

17 THE DEPUTY CLERK: Case on trial continued.  
18 Government and defense present, jurors are not present.

19 THE COURT: What did you find in your five-minute  
20 break?

21 MS. HANFT: Your Honor, the government's view is that  
22 it is not a hundred percent clear and so we --

23 MR. BRAFMAN: I can't hear you.

24 MS. HANFT: We have no problem with the Court saying  
25 that the particular public official, the jury needs to be



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1 unanimous as to that, but the Court needs to make clear that  
2 the particular means by which the bribe happened --

3 THE COURT: I'm not making anything clear. I am  
4 asking you one question.

5 MS. HANFT: I understand, your Honor.

6 THE COURT: I asked you if I should say one thing.

7 MS. HANFT: I understand that, your Honor. So, I  
8 think our view is that it is fine. We have no objection to the  
9 Court saying that they need to be unanimous as to the official.

10 MR. BRAFMAN: Your Honor, we would object to that.  
11 You have given them an instruction that already said that they  
12 have to be unanimous beyond a reasonable doubt as to whether  
13 the defendant bribed anyone and you have already told them that  
14 so long as they decide --

15 THE COURT: Mr. Brafman, if you don't want the  
16 instruction my lips are sealed.

17 MR. BRAFMAN: Thank you.

18 THE COURT: I just don't understand how you can  
19 possibly -- I am very uncomfortable with that because if -- if  
20 six of the jurors thought that Mr. Nicholson was bribed and six  
21 of the jurors thought that Mr. Velez was bribed but not  
22 Mr. Nicholson, in a drug case I would say you have to be  
23 unanimous about the type of drugs. I failed to see how you  
24 cannot have to be unanimous about who got the bribe.

25 MR. BRAFMAN: You convinced me, your Honor.

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1 MR. SOLOWIEJCZYK: So, you want it?

2 THE COURT: I just think that is weird.

3 MR. SOLOWIEJCZYK: So he now wants it?

4 MR. BRAFMAN: We are not doing a special verdict.

5 THE COURT: No, we don't have to have a special  
6 verdict sheet but they have to be told.

7 MR. BRAFMAN: Thank you, your Honor.

8 MS. HANFT: Your Honor, at risk of raising the same  
9 issue again, what I was pointing out is that they need not be  
10 unanimous as to the particular thing of value.

11 THE COURT: Excuse me. I asked you one question.

12 MS. HANFT: I understand, your Honor.

13 THE COURT: One question. Okay. So, let's bring the  
14 jurors back in.

15 (Continued on next page)

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1 (Jury present)

2 THE COURT: I'm sorry. People are having difficulty  
3 hearing me? That is rarely the case but if you are having  
4 difficulty hearing me, let me know. Okay. Have a seat.

5 One reason that they may be having difficulty is that  
6 my mic is not on.

7 THE DEPUTY CLERK: That's on me.

8 THE COURT: But, gee, it would be a first.

9 All right. I'm going to take you back to the very  
10 first element of Count One, which is where the government must  
11 prove beyond a reasonable doubt that the defendant offered,  
12 promised, or gave money or something of value to one or more of  
13 Mr. Nicholson, Mr. Bright, and Mr. Velez. Now, it is enough  
14 that the government prove that something was delivered, offered  
15 or given to one of them, but you have got to be unanimous about  
16 if it is less than all three, you have to be unanimous about  
17 which one. Okay? You have to be unanimous about at least one  
18 person. So, in order to reach a unanimous verdict it would not  
19 be sufficient if six of you were to conclude that the  
20 government had proved that the defendant offered, promised, or  
21 gave something of value to Mr. Velez but not to Mr. Nicholson  
22 or Mr. Blight, and the other six of you concluded that the  
23 government had proven beyond a reasonable doubt that the  
24 defendant offered, promised, or gave something of value to  
25 Mr. Blight but not Mr. Nicholson or Mr. Velez. All 12 of you

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1 have to agree that the defendant offered, promised, or gave  
2 money or something of value to at least one person and you all  
3 agree as to the same person, in order for the government to  
4 prove the first element. Okay?

5 Having clarified that, let's move on to the tax part.

6 Now, Count Four charges that the defendant attempted  
7 to evade and defeat a substantial part of the tax due and owing  
8 for the 2012 tax year for First Star Auto Repair, Inc. The  
9 crime of tax evasion has four elements. The first element of  
10 the offense which the government must prove beyond a reasonable  
11 doubt is that the taxpayer, in this case First Star Auto  
12 Repair, Inc., owed substantially more federal income tax for  
13 the calendar year 2012 than was declared on its income tax  
14 return. The government does not have to prove that the  
15 defendant attempted to evade or defeat payment of all the taxes  
16 that were owed for the 2012 tax year, nor does the government  
17 have to prove the exact amount that First Star owed in taxes.  
18 The government need only prove that the amount actually owed by  
19 First Star for the year 2012 was substantial and that the  
20 defendant attempted to evade or defeat all or a substantial  
21 part of the taxes that First Star owed.

22 Whether the amount of tax due is substantial is an  
23 issue for you to decide. Substantiality is not measured in  
24 terms of gross or net income or by any particular percentage of  
25 the tax that is shown to be due and payable. All of the

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1 attendant circumstances must be taken into consideration. A  
2 few thousand dollars of evaded tax money may, in a given case,  
3 be considered substantial depending on the circumstances.

4 So, to prove that a substantial tax was due, the  
5 government must prove beyond a reasonable doubt two things:

6 First, that the taxpayer, here, First Star, received  
7 substantial unreported income; and second, that there was tax  
8 due or additional tax due as a result of the receipt of that  
9 unreported income. In reaching your decision on whether First  
10 Star owed substantial federal income taxes for the year 2012  
11 you should consider, along with all the other evidence, the  
12 testimony and exhibits that were introduced during the trial  
13 concerning the computation of the taxpayer's liabilities. If  
14 you find, based on all the evidence, that the government has  
15 established beyond a reasonable doubt that First Star received  
16 unreported income and that as a result of that income there was  
17 a substantial amount of tax due and owing, then the first  
18 element is satisfied.

19 The second element of the tax evasion offense that the  
20 government must prove beyond a reasonable doubt is that the  
21 defendant committed an affirmative act constituting an evasion  
22 or an attempt to evade or defeat income taxes.

23 The phrase attempt to evade or defeat income tax  
24 involves two things. First, the formation of an intention, a  
25 conscious aim or objective to evade or defeat a tax or the

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1 payment thereof; and second, willfully performing some act to  
2 accomplish the intent to evade or defeat the tax.

3 Count Four alleges that the defendant knew and  
4 believed that for the 2012 tax year First Star Auto Repair,  
5 Inc., had substantial taxable income upon which there was  
6 substantial amount of tax due and owing and that the defendant  
7 tried, in some way, to evade the assessment of a substantial  
8 portion of the tax that was due and owing. Therefore, in order  
9 to prove Count Four the government must prove beyond a  
10 reasonable doubt that for the year charged -- 2012 -- the  
11 defendant both intended to evade or defeat the tax that was due  
12 and that he willfully committed some act or caused some act to  
13 be committed that was designed to misrepresent or conceal his  
14 income -- I should say First Star's income from the IRS.

15 There are many different ways that one may evade or  
16 try to evade a tax. The statute, Section 7201 of the United  
17 States Code, provides that the attempt can be in any manner. A  
18 general rule is that any conduct, the likely effect of which  
19 would be to mislead or conceal for tax evasion purposes, is  
20 sufficient to establish an affirmative act of attempting to  
21 evade or defeat income taxes. The only requirement is that the  
22 defendant must take some affirmative act with that purpose in  
23 mind.

24 Now, the mere failure to do what the law requires is  
25 not an affirmative act. Failing to file an income tax return

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1 and failing to pay income taxes, standing alone, are not  
2 sufficient by themselves to make out the affirmative act of  
3 attempting to evade or defeat taxes. The defendant has to do  
4 something more in order to be guilty of tax evasion. The  
5 defendant must engage in some affirmative conduct that is  
6 likely to mislead the government or to conceal taxable income  
7 from the government. Even a lawful act can constitute an  
8 attempt to evade and defeat if that act is performed by the  
9 defendant with the intent to evade or defeat income tax.

10 Conduct that constitutes or is sufficient to establish  
11 an affirmative attempt to evade a tax includes -- not limited  
12 to but includes the making of false and misleading statements  
13 to the IRS, the filing or causing to be filed of false tax  
14 returns or forms with the IRS, failing to report income, the  
15 use of corporate entities to pay personal bills, placing  
16 ownership of companies in the names of others, dealing  
17 extensively in cash, or any other conduct the likely effect of  
18 which would be to mislead or to conceal including directing  
19 other individuals to do any of the things I just mentioned.

20 Although the government must prove that the defendant  
21 committed some affirmative act constituting an attempt to  
22 evade, it need not prove each act of evasion that is alleged in  
23 the indictment, proof of one affirmative act is enough. You  
24 must all agree -- 12 people must agree -- on at least one  
25 affirmative act that the defendant commit in order to satisfy

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1 this element.

2           The third element the government must prove beyond a  
3 reasonable doubt is that the defendant acted knowingly and  
4 willfully. To show that the defendant acted knowingly the  
5 government must prove beyond a reasonable doubt that the  
6 defendant knew that the taxpayer, here First Star Auto Repair,  
7 Inc., owed a substantial amount of taxes for the year 2012.  
8 Whether or not the defendant had this knowledge is a question  
9 of fact to be determined by you on the basis of all the  
10 evidence. As I have previously instructed you, an act is done  
11 knowingly only if it is done purposely and deliberately and not  
12 because of a mistake or accident or negligence or some other  
13 innocent reason.

14           The government must also prove, beyond a reasonable  
15 doubt, that the defendant acted willfully. In this context the  
16 word willful connotes a voluntary and intentional violation of  
17 a known legal duty. In order for the government to prove the  
18 crime charged it must establish beyond a reasonable doubt that  
19 the defendant acted voluntarily and intentionally with the  
20 specific intent to keep from the government a tax imposed by  
21 the tax laws which it was the legal duty of the defendant to  
22 pay in which the defendant knew it was his legal duty to pay.  
23 Mere negligence, even gross negligence, is not sufficient to  
24 constitute willfulness.

25           Now, because the government must prove that the



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1 defendant knew that the taxpayer, here First Star Auto Repair,  
2 had a legal duty to pay, if the defendant believed in good  
3 faith that First Star Auto did not owe the taxes that the  
4 government claims it does, then the defendant can't be guilty  
5 of criminal intent to evade taxes. So, if you find that the  
6 defendant honestly and genuinely believed that First Star Auto  
7 owed no additional taxes for the year 2012, even if you think  
8 that belief was unreasonable or irrational, then you must find  
9 him not guilty.

10 However, neither the defendant's disagreement with the  
11 law nor his own belief that the law should not apply to him, or  
12 that it's unconstitutional no matter how earnestly that belief  
13 is held, is a defense of good faith, misunderstanding or  
14 mistake. It is the duty of all citizens to obey the law  
15 regardless of whether they agree with it. Good motive is  
16 irrelevant if the defendant knows of his duty, under the law.

17 The defendant does not have the burden to establish  
18 his good faith. Why? Because the defendant has nothing to  
19 prove. It is the government's burden to prove that the  
20 defendant did not have a good faith misunderstanding of the  
21 law. The burden of establishing lack of good faith and the  
22 existence of criminal intent rests on the prosecution which it  
23 must prove it beyond a reasonable doubt.

24 In determining whether the defendant acted in good  
25 faith or whether he willfully attempted to evade or defeat the

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1 taxes, you are entitled to consider all of the evidence that  
2 bears on his state of mind and then you, as jurors, draw your  
3 own inferences as you think they are warranted by the evidence.  
4 Obviously, knowledge and intent are matters that exist in the  
5 mind and science has not yet devised a way to permit us to  
6 enter into a person's mind and to know exactly what he is  
7 thinking. Therefore, knowledge and intent are rarely, if ever,  
8 proved by direct evidence but direct evidence is not required  
9 because circumstantial evidence may be relied on and such  
10 evidence may be given the same weight as direct evidence. The  
11 intent with which an act is done is often more clearly and  
12 conclusively shown by the act itself, or by a series of actions  
13 rather than by words or explanations of the act long after its  
14 occurrence. Frequently, the actions of individuals speak of  
15 their intentions more clearly than do their words, as was said  
16 in the old adage, actions often speak louder than words.  
17 Accordingly, knowledge and intent are often established by the  
18 defendant's words, conduct, acts and all the circumstances that  
19 surround them as of the time that the act occurred and the  
20 reasonable inferences that you can draw from what the  
21 defendant, did, said, at that time. You should apply your  
22 common sense and draw such reasonable inferences as may be  
23 warranted by facts that are proved to your satisfaction.

24 In determining these issues you may consider any  
25 statements made and acts done or omitted to be done by the

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1 defendant, together with all other facts and circumstances that  
2 are in evidence which reasonably relate to the determination of  
3 the defendant's state of mind. In other words, the only way  
4 for you to determine whether the government has proved the  
5 defendant's intention beyond a reasonable doubt is to take into  
6 consideration all of the facts and circumstances as shown by  
7 the evidence including the exhibits, testimony, stipulations,  
8 and determine from such facts and circumstances whether it was  
9 the intent of the defendant at the time if question to attempt  
10 to evade and to defeat the taxes at issue.

11 (Continued on next page)

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ICIHiss2

Charge

1 THE COURT: This says the same thing for about the  
2 15th time, which we don't need to do.

3 In determining whether the defendant acted knowingly  
4 and willfully, you may consider also whether the defendant  
5 deliberately closed his eyes to what would otherwise have been  
6 obvious to him. If you find beyond a reasonable doubt that the  
7 defendant acted with a conscious purpose to avoid learning the  
8 truth, this would permit an inference of knowledge on the part  
9 of the defendant.

10 Stated another way, a defendant's knowledge of a fact  
11 may be inferred from willful blindness to the existence of that  
12 fact. You may consider whether or not defendant displayed  
13 deliberate indifference or refusal to be perform -- to be  
14 informed in this regard. It is entirely up to you whether you  
15 find any deliberate closing of the eyes, and it's up to you  
16 what inference you draw from the evidence.

17 I remind you that not filing a tax return by itself is  
18 insufficient to establish willfulness. In deciding about the  
19 defendant's state of mind, you should consider all the evidence  
20 that, in your common sense and experience, bears on this  
21 question. Enough already.

22 Count Five charges that from in or about 2012 until in  
23 or about August of 2016, the defendant, Ibrahim Issa, aided and  
24 assisted in the preparation and presentation of a fraudulent or  
25 false amended corporate tax return, otherwise known as IRS Form

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Charge

1 1120X, for First Star Auto Repair Inc. for the tax year 2012.

2 This charge has three elements that the government  
3 must establish beyond a reasonable doubt.

4 The first element of Count Five is that the defendant  
5 advised or assisted the preparation of a federal income tax  
6 return. In this case, the income tax return is the amended  
7 corporate income tax return for First Star Auto Repair Form  
8 1120X, and this is a form that was subsequently filed with the  
9 IRS. You must find that it was subsequently filed with the  
10 IRS.

11 To satisfy this element, the government is not  
12 required to prove that the defendant personally prepared the  
13 return in issue or that he dealt personally with the taxpayer  
14 or that he signed the return. May prove those things; doesn't  
15 have to prove those things. It is sufficient to satisfy this  
16 first element if the government proves that the defendant in  
17 any way assisted directly or indirectly in the preparation of  
18 the return.

19 The second element you must find beyond a reasonable  
20 doubt is that the tax return was false as to at least one  
21 material matter.

22 Count Five specifically alleges that the amended  
23 corporate tax return for First Star Auto Repair for tax year  
24 2012 was false and fraudulent as to material matters because it  
25 fraudulently misrepresented First Star Auto Repair's income and

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Charge

1 expenses. A tax return may be false in a number of ways, such  
2 as the understatement of income or the overstatement or  
3 mischaracterization of expenses. The false statement in the  
4 return must be material. This means it must be essential to an  
5 accurate determination of the defendant's tax liability.

6 The third and final element you must find beyond a  
7 reasonable doubt is that the defendant acted willfully, which  
8 is a term I have already defined for you.

9 With respect to Count Five, in order for the  
10 government to prove that the defendant acted willfully, it must  
11 establish beyond a reasonable doubt that the defendant acted  
12 voluntarily and intentionally, with the specific intent to aid  
13 and assist in the filing of a false tax return when it was his  
14 legal duty not to do that and the defendant knew it was his  
15 legal duty not to do that.

16 Counts Six, Seven, and Eight charge Mr. Issa with  
17 subscribing to false individual tax returns. Count Six is for  
18 the tax year 2012. Count Seven is for the tax year 2013. And  
19 Count Eight is for the tax year 2014.

20 The charge of subscribing to false individual income  
21 tax returns has four elements.

22 The first element that the government must prove  
23 beyond a reasonable doubt under these counts, considered  
24 separately, each year considered separately, is that the  
25 defendant subscribed and filed the tax return that you are

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1 considering for that count.

2 A tax return is subscribed at the time it is signed.  
3 A tax return filed using an electronic signature is treated in  
4 the same manner as if it was actually wet signed. A tax return  
5 is filed at the time it is delivered or submitted to the IRS.  
6 It is not required that the tax return be processed or accepted  
7 by the IRS in order to satisfy this element.

8 The second element that the government must prove  
9 beyond a reasonable doubt under each of Counts Six, Seven, and  
10 Eight, considered separately, is that the return you are  
11 considering contained a written declaration that it was made  
12 under penalty of perjury. To satisfy this element, the  
13 government must prove that on the face of the return, it  
14 contained a statement indicating that the return was made under  
15 penalty of perjury.

16 The third element the government must prove beyond a  
17 reasonable doubt is that the defendant did not believe that the  
18 return you are considering for each count to be true and  
19 correct as to every material matter. To prove this element,  
20 the government must prove that at least one item on the return  
21 was materially false and the defendant knew that this was so.

22 An income tax return may be false not only by reason  
23 of understatement of income but also because of overstatement  
24 of lawful deductions or because deductible expenses were  
25 mischaracterized on the return. The false statement in the

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1 return must be material. That means it must be essential to an  
2 accurate determination of the defendant's tax liability.

3 The government must also prove that the defendant knew  
4 that the statement was false. Remember that a person acts  
5 knowingly when he acts intentionally and voluntarily and not  
6 because of ignorance, mistake, accident, or carelessness.  
7 Whether the defendant acted knowingly may be proved by the  
8 defendant's conduct and by all the facts and circumstances  
9 surrounding the case.

10 The fourth and final element you must find beyond a  
11 reasonable doubt under each of Counts Six, Seven, and Eight,  
12 considered separately, is that the defendant acted willfully.  
13 I already explained the meaning of the term "willfully" when we  
14 were talking about Count Four.

15 With respect to Counts Six, Seven, and Eight, in order  
16 for the government to prove this element, it must establish  
17 beyond a reasonable doubt that the defendant acted voluntarily  
18 and intentionally with the specific intent to make a statement  
19 that the defendant knew was false when it was the legal duty of  
20 the defendant to answer truthfully, and the defendant knew it  
21 was his legal duty to answer truthfully.

22 Now, with respect to Counts One, the bribery count;  
23 Two, the government funds count; and Counts Four through Eight,  
24 the substantive tax counts, Mr. Issa is charged not only with  
25 committing those crimes but with having aided and abetted or



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1 willfully causing another person to commit those crimes. If  
2 you all agree that the government has proved the defendant  
3 guilty beyond a reasonable doubt on any of the substantive  
4 counts I have just described, you don't need to consider these  
5 alternate theories of liability as to that specific count.  
6 However, if you do not find the defendant guilty beyond a  
7 reasonable doubt on any one or more of the substantive counts,  
8 you will then consider whether the government has proven that  
9 the defendant is guilty under one of two alternative theories:  
10 aiding and abetting and willfully causing the commission of a  
11 crime by someone else.

12 It is unlawful for a person to aid, abet, counsel,  
13 command, induce, or procure someone else to commit a crime. A  
14 person who does that is just as guilty of the crime as if he  
15 actually committed it. Accordingly, if a defendant is charged  
16 with a substantive count in an indictment, you may find the  
17 defendant guilty on that count if you find the government has  
18 proved beyond a reasonable doubt that someone else actually  
19 committed the crime and that the defendant aided, abetted,  
20 counseled, commanded, induced, or procured the commission of  
21 the crime.

22 In order to convict a defendant as an aider and  
23 abettor, the government must prove beyond a reasonable doubt  
24 two elements:

25 First, it must prove that somebody other than the

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1 defendant actually committed a crime. It has to be the crime  
2 charged. Obviously, no one can be convicted of aiding and  
3 abetting the criminal acts of someone else if nobody else  
4 committed a crime in the first place. Accordingly, if the  
5 government has not proved beyond a reasonable doubt that a  
6 person other than the defendant committed the substantive crime  
7 charged in each of those counts of the indictment, One, Two,  
8 and Four through Eight, then you need not consider the second  
9 element under this theory of aiding and abetting. But if you  
10 do find that a crime was committed by someone other than the  
11 defendant, then you should consider whether the defendant aided  
12 or abetted the commission of that crime.

13 In order to convict a defendant on an aiding and  
14 abetting theory, the government must prove that the defendant  
15 willfully and knowingly associated himself in some way with the  
16 crime and that he willfully and knowingly engaged in some  
17 affirmative conduct or some overt act for the specific purpose  
18 of bringing about that crime. Participation in a crime is  
19 willful if it is done voluntarily and intentionally and with  
20 the specific intent to do something the law forbids.

21 The mere presence of the defendant in a place where a  
22 crime is being committed is not enough to make the defendant an  
23 aider and abettor, even if he knows that a crime is being  
24 committed. Similarly, a defendant's acquiescence in the  
25 criminal conduct of another, even with guilty knowledge, is not

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1 enough to establish aiding and abetting. An aider and abettor  
2 must know that the crime is being committed, and he must act in  
3 a way that is intended to bring about the success of the  
4 criminal venture.

5 So to determine whether a defendant aided and abetted  
6 the commission of a crime by someone else, ask yourself these  
7 questions:

8 Did the defendant participate in the crime charged as  
9 something he wished to bring about?

10 Did he knowingly associate himself with the criminal  
11 venture?

12 Did he seek by his actions to make the criminal  
13 venture succeed?

14 If the defendant did that, then he's an aider and  
15 abettor, and he's guilty of the offense. If the defendant did  
16 not do that, then he's not an aider and abettor.

17 Alternatively, the government may meet its burden by  
18 establishing the defendant willfully caused someone else to  
19 commit a crime. The law provides that whoever willfully causes  
20 an act to be done which if directly performed by him would be a  
21 criminal offense is punishable as a principal.

22 What that means is that even if the defendant himself  
23 did not commit the particular crime that's charged, the  
24 government may meet its burden of proof by proving that another  
25 person actually committed the offense with which the defendant

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1 is charged and proving beyond a reasonable doubt that the  
2 defendant willfully caused that other person to commit the  
3 crime.

4 The term "willfully" means intentionally rather than  
5 through mistake, mere negligence, or for some other innocent  
6 reason. Therefore, if you are persuaded beyond a reasonable  
7 doubt that the defendant willfully caused someone else to  
8 commit a particular substantive crime, then he is just as  
9 guilty of that crime as if he had done it himself.

10 There is one critical difference between aiding and  
11 abetting and willfully causing another to commit a crime. With  
12 respect to willful causation, the government need not prove  
13 that the defendant acted through a guilty person. Rather, the  
14 defendant can be found guilty even if he acted through someone  
15 who had no knowledge of the crimes charged in the indictment.

16 OK. So we have one count left, and that is  
17 conspiracy.

18 In addition to the substantive counts of tax fraud,  
19 Counts Four through Eight, the defendant is charged in Count  
20 Three with conspiracy to defraud the Internal Revenue Service,  
21 to subscribe to false and fraudulent tax returns, to aid and  
22 assist in the preparation and filing of false tax returns, and  
23 to attempt to evade and defeat a substantial part of income tax  
24 that was due and owing.

25 What is a conspiracy? It is an agreement or

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1 understanding between two or more persons that they would try  
2 to accomplish some unlawful purpose.

3 A conspiracy, in other words, is an agreement to  
4 violate the law.

5 The offense of conspiracy to commit an illegal act is  
6 separate and distinct from the actual commission of the illegal  
7 act. To put it in context, conspiring to commit the tax  
8 offenses as charged in Count Three is a separate and distinct  
9 crime from actually committing the tax offenses that are  
10 charged in Counts Four through Eight. For example, the jury  
11 could find that the defendant had failed to prove -- the  
12 government had failed to prove that the defendant actually  
13 aided and assisted in the preparation and filing of false tax  
14 returns as charged in Count Four, but could also find that the  
15 government had proved beyond a reasonable doubt that the  
16 defendant conspired, agreed to aid and assist in the  
17 preparation and filing of false tax returns.

18 So even if you acquit the defendant on all of the  
19 substantive tax counts, Count Four, Five, Six, Seven, and  
20 Eight, you must still decide whether the government has proved  
21 beyond a reasonable doubt that the defendant conspired, that he  
22 agreed with others, to commit the tax offenses as alleged in  
23 Count Three.

24 Now, the first element of the crime of conspiracy that  
25 the government must prove beyond a reasonable doubt is that two

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1 or more persons entered into an agreement to do something that  
2 violated the law.

3 In order to prove the existence of this agreement, the  
4 government is not required to show that two or more people sat  
5 around a table and entered into a solemn compact, orally or in  
6 writing, stating "We agree to violate the law" and setting out  
7 the details of how they're going to do that. Your common sense  
8 will tell you that when people enter into a criminal  
9 conspiracy, much is left to their unexpressed understanding.  
10 Conspirators do not usually reduce their agreements to writing  
11 or acknowledge them before a notary public, nor do they  
12 broadcast their plans to the public. From its very nature, a  
13 conspiracy is almost always secret, both in its origins and in  
14 its execution.

15 It is therefore sufficient if the government proves  
16 beyond a reasonable doubt that two or more people arrived at a  
17 common understanding to violate the law in some way or manner  
18 either explicitly or by implication.

19 No particular number of people need to agree to  
20 violate the law together in order for the government to prove  
21 that a conspiracy existed. It need prove only that two or more  
22 people entered into the unlawful agreement that is alleged in  
23 the indictment in order for to you find that a conspiracy  
24 existed.

25 In deciding whether the government has proved the

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1 existence of a conspiracy beyond a reasonable doubt, you may  
2 consider whether the alleged coconspirators did anything that  
3 would have tended to carry out an apparent criminal purpose.  
4 The old adage "actions speak louder than words" is also  
5 applicable here. Sometimes the only evidence available to  
6 demonstrate the existence of an agreement to violate the law  
7 concerns seemingly disconnected acts that tend to show the  
8 existence of an agreement when you consider them in connection  
9 with each other. Evidence of this sort can prove the existence  
10 of a conspiracy as satisfactorily and conclusively as more  
11 direct proof. So in deciding whether the conspiracy charged in  
12 Count Three of the indictment actually existed, you may  
13 consider not just what the alleged conspirators said but also  
14 their actions, their conduct.

15 In regard to the timing of the alleged conspiracy,  
16 Count One alleges that it existed from 2012 through  
17 August 2016. Now, it's not necessary that the government prove  
18 that the conspiracy started or ended on a particular precise  
19 date, as long as it proves beyond a reasonable doubt that the  
20 conspiracy was formed and existed at some point during the  
21 period that is alleged in the indictment.

22 Now, the object of a conspiracy is the illegal thing  
23 that the members of the conspiracy agree they will try to  
24 accomplish. The indictment charges that the conspiracy alleged  
25 in Count Three had four objects: It had the object to defraud

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1 the Internal Revenue Service, the object to subscribe to false  
2 and fraudulent tax returns, the object to aid and assist in the  
3 preparation and filing of false tax returns, and the object to  
4 attempt to evade and defeat a substantial part of the income  
5 taxes that were due and owing.

6 Now, it is not necessary for you to find that the  
7 conspiracy embodied all four of the unlawful objectives. So if  
8 you were to find that the evidence establishes the existence of  
9 a conspiracy to accomplish only one of the four objectives,  
10 that will be fine, as long as all 12 of you agreed about which  
11 one that was. But if six of you concluded that the government  
12 had proved objective number two and none of the rest of them  
13 and six of you concluded that the government had proved object  
14 number three and none of the rest of them, you would not have a  
15 unanimous verdict.

16 So let me now instruct you in more detail about the  
17 four objects.

18 First object is to defraud the IRS. A conspiracy to  
19 defraud the United States need not necessarily involve cheating  
20 the government out of money or property. The statute also  
21 includes conspiracies to interfere with or obstruct any lawful  
22 government function by fraud, deceit, or any dishonest means.  
23 I instruct you that the Internal Revenue Service, commonly  
24 known as the IRS, is an agency of the United States government.  
25 The IRS is responsible for the collection of tax revenue. As



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1 part of these efforts, the IRS requires that taxpayers,  
2 including corporations, truthfully and honestly report their  
3 full taxable income and deductions. Thus, the phrase  
4 "conspiracy to defraud the United States" as used in the  
5 indictment means that the defendant and his coconspirators  
6 allegedly conspired to impede, impair, obstruct, or defeat the  
7 lawful functions of the IRS to determine what taxes are owed  
8 and to collect those tax revenues.

9 It is not necessary that the government or the IRS  
10 actually suffer a financial loss from the scheme, although in  
11 this case the government contends that such losses did occur.  
12 Nor is it necessary for you to find that at any particular  
13 instance the conspirators' conduct was actually examined by the  
14 IRS. A conspiracy to defraud exists when the government proves  
15 beyond a reasonable doubt that there was an agreement between  
16 the defendant and one or more other people to impede, impair,  
17 obstruct, or defeat some lawful function of the IRS by fraud or  
18 dishonest means. Even if the taxpayer's ultimate legal  
19 position on some issue is correct and he owes no additional  
20 taxes, that's not a defense to the crime charged. One cannot  
21 use deception and dishonest means, such as making false  
22 statements to the IRS, to impede, impair, obstruct, or defeat  
23 the IRS, even to protect a legitimate tax position.

24 The second object of the conspiracy alleged in the  
25 indictment is that the defendant and others agreed to violate

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1 the law that makes it a crime to subscribe to or to sign false  
2 tax returns.

3 I described the elements of that offense to you when I  
4 talked to you about Count Six, Seven, and Eight. The same  
5 elements apply to the second object of the conspiracy. You  
6 should apply those instructions when you're considering whether  
7 the government has proved this second object of the conspiracy.

8 But Counts Six, Seven, and Eight charge Mr. Issa with  
9 subscribing to false individual income tax returns, but Count  
10 Three, the conspiracy count we're talking about now, alleges  
11 that he conspired with others in the subscribing to false  
12 corporate tax returns of companies that were controlled by him  
13 for the year 2012. OK. So it may be the same elements, but  
14 Counts Six, Seven, and Eight, you're applying those to  
15 Mr. Issa's individual tax returns, and in the conspiracy count,  
16 the alleged conspiracy has to do with the corporate tax  
17 returns.

18 And because Count Three charges a conspiracy, unlike  
19 Counts Six, Seven, and Eight, the government does not need to  
20 prove that anyone actually committed the substantive crime of  
21 subscribing to a false tax return. It needs to prove beyond a  
22 reasonable doubt only that there was an agreement to do so.

23 The third object of the conspiracy alleged in the  
24 indictment is that the defendant and others agreed to violate  
25 the law that makes it a crime to aid and assist in the

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1 preparation and filing of false tax returns. That's the crime  
2 that was charged in Count Five, and it occurs when a person  
3 willfully advises or assists in the preparation of a false tax  
4 return.

5 Apply the instructions on the elements of the crime of  
6 willfully advising or assisting in the preparation of a false  
7 tax return that I gave you in connection with Count Five when  
8 considering whether the government has proved this object of  
9 the conspiracy.

10 Again, there's a distinction between the substantive  
11 count alleged in Count Five and the third object of the  
12 conspiracy alleged in Count Three. You have to keep it in  
13 mind. Count Five relates specifically to the charge that  
14 Mr. Issa aided and assisted in the preparation and presentation  
15 of a false or fraudulent amended corporate tax return for First  
16 Star Auto for the year 2012, but the object of the conspiracy,  
17 the third object of the conspiracy alleged in Count Three is  
18 broader than that. It includes aiding and assisting in the  
19 preparation of a fraudulent or false corporate tax return for  
20 any companies owned or controlled by Mr. Issa.

21 Furthermore, because Count Three charges a conspiracy,  
22 unlike Count Five, the government does not need to prove that  
23 anyone actually committed the substantive crime of aiding and  
24 assisting in the preparation and presentation of a false tax  
25 return. It only needs to prove that there was an agreement to

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1 do that.

2 The fourth and final object of the conspiracy alleged  
3 in the indictment is that the defendant and others agreed to  
4 violate the law that makes it a crime to attempt to evade and  
5 defeat a substantial part of the tax that was due and owing.  
6 Now, I described the elements of that offense to you in  
7 connection with Count Four, and the same definition of the  
8 elements applies to the fourth object of the conspiracy, so you  
9 should apply the Count Four instructions when considering  
10 whether the government proved this object of the conspiracy.

11 But once again, there's a distinction. Count Four  
12 relates specifically to Mr. Issa's attempting to evade taxes  
13 for the tax year 2012 with respect to First Star Auto Repair  
14 Inc. But the fourth object of the conspiracy alleged in Count  
15 Three is broader than that, and it includes tax evasion for the  
16 tax year 2012 for additional companies controlled by Mr. Issa.

17 Once again, because Count Three charges a conspiracy,  
18 the government does not need to prove that anyone committed the  
19 substantive crime of tax evasion. It need prove beyond a  
20 reasonable doubt only that there was an agreement to do so.

21 If you conclude that the government has proven beyond  
22 a reasonable doubt that the conspiracy charged in Count Three  
23 existed, you'll move on to the second element of the crime,  
24 which is that the defendant, Mr. Issa, joined in the conspiracy  
25 and that he did so knowingly and willfully and with the intent

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1 to further its unlawful purpose or purposes.

2 The government must prove beyond a reasonable doubt  
3 that the defendant had the appropriate level of knowledge with  
4 respect to the illegal agreement into which he entered and that  
5 he agreed to take part in the conspiracy to further, promote,  
6 and cooperate in its unlawful objective or objectives. With  
7 respect to the first object of the conspiracy, the scheme to  
8 defraud the United States, the government must prove that the  
9 defendant acted knowingly and unlawful.

10 An act is done knowingly if it is done deliberately  
11 and purposefully; that is, the action must have been a product  
12 of the defendant's conscious objective rather than the product  
13 of a mistake or accident or negligence. Please keep in mind my  
14 previous instructions regarding the knowledge element.

15 "Unlawfully" means contrary to law. The defendant  
16 need not have known that he was breaking the law.

17 With respect to the second, third, and fourth  
18 objects -- subscribing to false tax return, aiding and  
19 assisting the preparation and filing of false tax returns, and  
20 attempting to evade and defeat a substantial part of the income  
21 taxes that were due and owing -- the government must also prove  
22 beyond a reasonable doubt that the defendant acted willfully.  
23 So it has to prove knowingly, it has to prove unlawfully, and  
24 it has to prove willfully, as I defined that term from  
25 previously instructing you.

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1           Now, it's not necessary that the defendant had been  
2 fully informed about all the details of the conspiracy in order  
3 to justify an inference of knowledge on his part. To have  
4 guilty knowledge, the defendant need not have known the full  
5 extent of the conspiracy or about all of its activities or  
6 participants. Nor is it necessary that the defendant received  
7 any monetary benefit from participating in the conspiracy or  
8 have a financial stake in the outcome as long as he, in fact,  
9 did participate in the conspiracy in the manner I've explained.  
10 The existence or nonexistence of such an interest may properly  
11 be considered by you in determining whether the defendant was a  
12 member of any conspiracy.

13           In determining whether the defendant acted knowingly,  
14 you may consider whether he deliberately closed his eyes to  
15 what otherwise would have been obvious to him. If you find  
16 beyond a reasonable doubt that the defendant was aware of a  
17 high probability that the tax returns were false and that the  
18 defendant acted with a conscious purpose to avoid learning the  
19 truth about whether or not the tax returns were accurate, then  
20 the knowledge element is satisfied. But I want to caution you  
21 that the knowledge requirement is not satisfied if all the  
22 government demonstrates is that the defendant was negligent or  
23 foolish or mistaken.

24           The duration and extent of a defendant's participation  
25 has no bearing on the issue of his guilt. A defendant need not

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1 have joined a conspiracy at the outset. He may have joined it  
2 for any purpose at any time during its progress. Once he  
3 joins, he will be held responsible for everything that happened  
4 before he joined and everything that happens during the  
5 conspiracy's existence while he is a member.

6 Each member of a conspiracy may perform separate and  
7 distinct acts and may perform them at different times. Some  
8 conspirators may play major roles and others, minor roles.  
9 Equal roles is not what the law requires. In fact, even a  
10 single act may be sufficient to make the defendant a part of  
11 the conspiracy.

12 I want to caution you, however, that mere association  
13 by one person with another does not make that person a member  
14 of a conspiracy, even when coupled with knowledge that a  
15 conspiracy is taking place. Mere presence at the scene of a  
16 crime, even coupled with knowledge that a crime is taking  
17 place, is not sufficient to support a conviction. So mere  
18 association in a business or otherwise with a conspirator does  
19 not by itself make one a member of that conspiracy, although a  
20 conspiracy may exist between persons who are also associated in  
21 lawful business activities. What is necessary is that the  
22 defendant participated in the conspiracy with knowledge of its  
23 object or objects and with an intent to aid in the  
24 accomplishment of those objects.

25 The third element the government must prove beyond a

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1 reasonable doubt is that at least one overt act was committed  
2 in furtherance of the conspiracy by some coconspirator, not  
3 necessarily the defendant.

4 The purpose of the overt act requirement is clear.  
5 There must have been something more than just making an  
6 agreement. Some overt step or action must have been taken by  
7 at least one of the conspirators in furtherance of that  
8 conspiracy.

9 The overt acts are set forth at paragraph 30 in the  
10 indictment, and there are four of them, which we are reprinting  
11 in the charge for your consideration while deliberating.

12 In furtherance of the conspiracy and to effect the  
13 illegal objects thereof, Ibrahim Issa, also known as "Tony  
14 Issa," the defendant, together with others, known and unknown,  
15 committed the following overt acts, among others, in the  
16 Southern District of New York and elsewhere:

17 A. In or about 2013, Issa prepared or caused to be  
18 prepared the false 2012 Issa Company-1 Form 1120, which was  
19 then sent to the IRS from the Bronx, New York.

20 B. In or about 2014, Issa and Coconspirator-1  
21 provided false information to Tax Preparer-1, causing to be  
22 prepared the false 2012 Issa Company-1 Form 1120X.

23 C. On or about August 27, 2014, Issa signed and  
24 subscribed the false 2012 Issa Company-1 Form 1120X.

25 D. On or about July 28, 2015, Coconspirator-1



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1 provided to Tax Preparer-2 a profit and loss statement for Issa  
2 Company-3 that omitted moneys received from Issa Company-1  
3 causing to be filed a false Form 1120 for Issa Company-3 for  
4 the tax year 2012.

5 Now, to translate, Issa Company-1 is First Star Auto.  
6 Coconspirator-1 is Daniela Silva. Tax Preparer-1 is Chris  
7 Tsamutalis. Tax Preparer-2 is George Mousouris. And Issa  
8 Company-3 is High Power Auto.

9 For the government to satisfy the overt act  
10 requirement, it is not necessary for the government to prove  
11 all of the overt acts alleged in the indictment. In fact, the  
12 government could prove none of the four overt acts that are  
13 alleged in the indictment and still satisfy the third element,  
14 as long as you found beyond a reasonable doubt that the  
15 government proved some other overt act that was not alleged  
16 specifically in the indictment. That's because the indictment  
17 says "committed the following overt acts, among others." The  
18 only requirement is that the conspiracy have gone beyond the  
19 mere talking stage and that one of the members of the  
20 conspiracy, not necessarily Mr. Issa, took some step or action  
21 in furtherance of the conspiracy during the life of the  
22 conspiracy.

23 You are further instructed that the overt act need not  
24 have been committed at precisely the time alleged in the  
25 indictments. It is sufficient if you are convinced beyond a

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1 reasonable doubt that it occurred at or about the time or place  
2 stated, as long as it occurred while the conspiracy, the  
3 agreement, was still in existence.

4 Now, bear in mind that an overt act standing alone may  
5 be an innocent and lawful act. However, an apparent innocent  
6 act can shed its harmless character if it is a step in carrying  
7 out, promoting, aiding, or assisting the conspiratorial scheme.  
8 You are therefore instructed that the overt act does not have  
9 to be an act which in and of itself is criminal or which in of  
10 itself constitutes an object of the conspiracy.

11 Finally, I need to instruct you on certain aspects of  
12 the tax laws that will assist you during your deliberation.  
13 The first one has to do with Form 1120.

14 Pursuant to the Internal Revenue Code and attendant  
15 regulations, corporations are required annually to report their  
16 revenues and attendant tax obligations on a United States  
17 corporate tax return Form 1120 unless specifically exempted by  
18 Congress. The Form 1120 must be filed with the IRS, and it is  
19 used to calculate the taxes owed to the IRS, if any, or  
20 alternatively, a refund if one is owed to the corporation.

21 Pursuant to the Internal Revenue Code and attendant  
22 regulations, a corporation must include on its Form 1120 gross  
23 income, which tax law defines as all income from whatever  
24 source derived, unless specifically exempted by law.

25 According to the tax law, a corporation may deduct

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1 from its gross income certain itemized deductions. The tax law  
2 provides in general there shall be allowed as a deduction all  
3 ordinary and necessary expenses paid or incurred during the  
4 taxable year in carrying on any trade or business. An ordinary  
5 expense is one that is common and accepted in the corporation's  
6 trade of field, business, or profession. A necessary expense  
7 is one that is helpful and appropriate for the corporation's  
8 business. An expense does not have to be required to be  
9 considered necessary.

10 One permissible deduction is for something called the  
11 "cost of goods sold." A corporation that wishes to claim an  
12 expense of the cost of goods sold must complete a United States  
13 corporate tax Form 1125-A, which must be filed with the IRS.  
14 The cost of goods sold is the total of, for example, purchases,  
15 labor costs, and any other costs listed by a corporation on  
16 that separate schedule.

17 OK. That has to do with the corporation. Now we're  
18 going to turn to individuals.

19 Form 1040. Pursuant to the Internal Revenue Code and  
20 attendant regulations, individuals generally are required  
21 annually to report their income and any attendant tax  
22 obligations on a United States Individual Income Tax Return,  
23 Form 1040, which must be filed with the IRS. The Form 1040 is  
24 also used to calculate the refund, if any, due to the taxpayer.

25 Pursuant to the Internal Revenue Code and attendant

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1 regulations, a taxpayer must include on his Form 1040 gross  
2 income, all income from whatever source is derived, unless  
3 specifically exempted by law.

4 A taxpayer who wishes to claim certain itemized  
5 deductions must complete a form called Schedule A and file it  
6 along with Form 1040. These deductions can include, among  
7 other things, unreimbursed employee business expenses and  
8 miscellaneous expenses. As a general matter, taxpayers are  
9 required to maintain records substantiating the deductions.

10 Under the tax law, a taxpayer is permitted to deduct  
11 certain expenses incurred in connection with his or her  
12 employment if such expenses satisfy each of the following three  
13 requirements: The expense must be paid in connection with the  
14 employer's trade or business; it must be an ordinary and  
15 necessary expense of the business; and the expense must not  
16 have been reimbursed by the employer. I earlier told you what  
17 an ordinary expense was and what a necessary expense was and  
18 that an expense does not have to be required to be considered  
19 necessary. To be deductible, the taxpayer must be able to  
20 substantiate the amount and employment purpose of all such  
21 expenses. If a taxpayer claims any other type of unreimbursed  
22 employee expense, he is required to list the type and amount of  
23 each expense, either on the appropriate line on 1040 or on an  
24 attached statement.

25 Finally, a person who operates a business or practices

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1 a profession as a sole proprietor must report income or loss on  
2 a Form 1040 Schedule C. An activity generally qualifies as a  
3 business if the primary purpose for engaging in the activity is  
4 for income or profit, and the taxpayer is involved in the  
5 activity with continuity and regularity. Sporadic activity or  
6 a hobby does not qualify as a business.

7 Now, I remind you that it is the government's burden  
8 to prove the defendant guilty beyond a reasonable doubt of the  
9 specifically charged violations of identified federal criminal  
10 laws. You may have heard testimony suggesting that the  
11 defendant committed acts that you might deem to be  
12 inappropriate, such as breaching the terms of contracts,  
13 failing to pay taxes due under state or local laws, or trying  
14 to cause people to violate postal service ethical rules, rules  
15 that may overlap in some respects with the federal bribery  
16 statute. Those things raise independent issues that are not  
17 charged in this case.

18 So when you consider this case, focus on the elements  
19 of the crimes charged as I've explained them to you. You may  
20 consider evidence about things like USPS rules or contract  
21 terms, but only insofar as it is relevant to the elements of  
22 the crimes charged.

23 Now, in addition to all of that, with respect to each  
24 alleged crime, you must consider the issue of venue, namely,  
25 that some act in furtherance of the unlawful activity charged

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1 in each count occurred in the Southern District of New York.  
2 The Southern District of New York includes Manhattan, the  
3 Bronx, Westchester, Rockland, Putnam, Dutchess, Orange, and  
4 Sullivan counties. Anything that occurs in the counties I have  
5 listed for you occurs in the Southern District of New York,  
6 that is, those counties and on the Verrazano-Narrows Bridge,  
7 which is not relevant to this case, but it's an interesting  
8 little fact. Verrazano-Narrows Bridge is in both the Southern  
9 and Eastern Districts of New York. I'm not sure why.

10 In this regard, the government need not prove that the  
11 entirety of the charged crime was committed in the Southern  
12 District of New York or that the defendant was present here.  
13 It is sufficient to satisfy the venue requirement if any act in  
14 furtherance of the crime charged occurred within the Southern  
15 District of New York.

16 Now, as to the venue requirement and the venue  
17 requirement only -- I'm not sure why because it just  
18 complicates matters -- the government does not need to prove  
19 venue beyond a reasonable doubt. It's the only thing the  
20 government does not need to prove beyond a reasonable doubt.  
21 It only has to prove venue by a preponderance of the evidence,  
22 which means it's more likely than not that there is a  
23 sufficient connection to the Southern District of New York.

24 You must decide separately whether, as to each  
25 separate count, there is sufficient connection to the Southern

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1 District of New York.

2 With respect to Counts One and Two, venue is  
3 established if any act in furtherance of the crime charged  
4 occurred within the Southern District of New York.

5 I'm not repeating this. Enough.

6 With respect to Count Four, the tax evasion charge,  
7 venue is established if the government proves by a  
8 preponderance of the evidence that any one affirmative act of  
9 evasion occurred in the Southern District of New York.

10 With respect to Count Five, the aiding and assisting  
11 in the preparation and presentation of a false corporate income  
12 tax charge, the government may establish venue by proving, with  
13 respect to the return at issue, either that the return was  
14 prepared and signed in the Southern District of New York or  
15 that the return was received and filed in the Southern District  
16 of New York or that any act of aiding and assisting in the  
17 preparation of the return took place in the Southern District  
18 of New York.

19 With respect to Count Six through Eight, venue is  
20 established with respect to each return at issue if you find  
21 that the government has proved by a preponderance of the  
22 evidence that the return was prepared and signed in the  
23 Southern District of New York, received and filed in the  
24 Southern District of New York, or that the defendant  
25 transmitted or caused the transmission of information from the

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1 Southern District of New York to the defendant's accountant for  
2 the purpose of preparing the return.

3 Finally, with respect to Count Three, venue is  
4 established if you find either that the agreement was formed or  
5 that an overt act was committed or caused to be committed in  
6 the Southern District of New York.

7 If you find that the government has failed to  
8 establish venue as to any count, then you must acquit the  
9 defendant on that count.

10 As we've proceeded through the charge, you notice I  
11 referred to various dates. It doesn't matter if a specific  
12 event is alleged to have occurred on or about a certain date or  
13 month, but the testimony indicates it was a slightly different  
14 date or month. The law only requires substantial similarity  
15 between the dates and months alleged in the indictment and the  
16 dates and months that are established by the evidence. What  
17 constitutes substantial similarity is up to you.

18 OK. Ladies and gentlemen, the verdict must represent  
19 the considered judgment of each juror. In order to return a  
20 verdict, you must be unanimous, all 12 jurors must agree either  
21 that the government has overcome the presumption and proven the  
22 defendant's guilt beyond a reasonable doubt or that it has not.

23 So you've heard a lot of evidence and argument over  
24 the last two weeks. I will be very surprised if you don't have  
25 some different opinions. How do you reach a unanimous verdict?



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1 Well, you have to do two things: First, you have to share with  
2 the other jurors your view about what the evidence shows,  
3 what's believable, what's credible, what's important, what  
4 proves what. That's part one. Part two is you have to sit  
5 back and listen to everybody else do the same thing. A  
6 deliberating juror both talks and listens.

7 It's your duty to consult with each other so you can  
8 deliberate with a view toward reaching an agreement. Now, I  
9 don't want you to do violence to your individual judgment  
10 because, in the end, each of you decides the case for yourself,  
11 but you can't do that until you have impartially considered the  
12 evidence and the views of your fellow jurors.

13 At this moment in the charge, I tell a story about  
14 many years ago when I was a judge down the street in the state  
15 courthouse, and this is a unique experience in my 23 years of  
16 doing this. I got a note from the jurors saying they couldn't  
17 reach a verdict, and it turned out when they went back into the  
18 jury room, one of the jurors announced that this was the  
19 verdict, this is the way he saw the evidence, and that that was  
20 the only thing he was going to consider and he didn't care what  
21 they thought. The other jurors were not able to engage him in  
22 conversation. He simply wouldn't talk. Finally, he turned his  
23 chair to the wall and he pulled out his newspaper and started  
24 reading it rather than engage in a thoughtful exchange of views  
25 with the other jurors.

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1           That jury didn't reach a verdict. You know you're not  
2 going to be like that jury, OK? You're going to impartially  
3 consider the evidence, listening to and considering the views  
4 of your fellow jurors. In the course of your deliberations,  
5 don't hesitate to reexamine your own views. Change your mind  
6 if you are convinced by the arguments of other jurors and their  
7 perspective on the evidence that there's a better way to look  
8 at the evidence. By the same token, don't surrender your  
9 honest conviction about the weight or the effect of the  
10 evidence just because the other jurors have a different opinion  
11 from you or merely for the purpose of getting out of here.

12           Remember at all times, you are not partisans. You are  
13 the judges of the facts.

14           When you retire, first thing you should do is elect  
15 one of you to be the foreperson of the jury. The foreperson is  
16 no more important than anybody else on the jury. The  
17 foreperson's vote has no greater weight than the weight of  
18 anybody else's vote on the jury. What does the foreperson do?  
19 Well, the foreperson presides over your deliberations, whatever  
20 that means to you, and the foreperson is the person who speaks  
21 for you here in open court. So pick somebody who you want to  
22 have do that.

23           If it becomes necessary during your deliberations for  
24 you to communicate with me, send me a note signed by the  
25 foreperson. If the foreperson goes on strike, that's happened

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1 to me twice, somebody else should sign the note. No member of  
2 the jury should ever try to communicate with me by any means  
3 other than a signed writing, and I'm not going to communicate  
4 with you except in two ways: Either I will send you back a  
5 signed writing, and if I do that, it will not just be signed by  
6 me, it will be signed by one of the law enforcement officers  
7 for the government and it will be signed by Mr. Brafman, or  
8 we'll bring out here and I'll talk to you the way I'm talking  
9 to you now, and we will all be here.

10 Now, do we have a court security officer?

11 THE LAW CLERK: He has not appeared yet.

12 THE COURT: In that case, I'm putting you in the  
13 custody of Mr. O'Neill. You will note from the oath I'm about  
14 to give him that he can't talk to you in any way or manner  
15 about any subject that touches on the merits of the case. He  
16 can talk to you about lunch, OK? He could talk to you about  
17 administrative stuff. He can't talk to you about the case.

18 Mr. O'Neill, would you raise your right hand.

19 (Law clerk sworn)

20 THE COURT: Now, if you send me a note, please just  
21 remember one thing. Do not tell me what the vote is on any  
22 count at any time. Note: Judge, we're deliberating on Count  
23 Four, and the vote is eight to four for acquittal, and we  
24 really need the following answer to the question. Wrong. I'm  
25 not supposed to know the vote. It screws everything up until

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Charge

1 the vote is 12 to nothing. So do not tell me what the vote is  
2 in any note. Thank you.

3 Now, if you need to hear or, in this miraculous era of  
4 computers, to see the testimony of any witness or any part of  
5 that witness' testimony, we can do that. You send us out a  
6 note signed by the foreperson telling us precisely what you  
7 want to hear. We will then scour the transcript, and we will  
8 find it. And in most instances, we now can copy it and send it  
9 back to you.

10 I ask you two things: First, be very specific about  
11 what you want and, second, don't ask for readback -- we still  
12 call it readback -- unless you talk among yourselves and  
13 exhaust your total memory, because the collective memory of 12  
14 people can be better than that of any one. But remember,  
15 nobody's notes are a substitute for the transcript. So if,  
16 after you talk, you are still divided about what you think you  
17 heard, do not look at Juror No. 7's notes and resolve the  
18 dispute that way. Instead, ask for a readback, OK?

19 Now, this is the time-consuming thing. Notes for  
20 readback almost always come when we've either just left for  
21 lunch or I have another matter on the calendar, which I now  
22 have to start drawing my attention to the rest of my cases, or  
23 something like that. It takes us a little while to get the  
24 passages that you want to hear. Give us a few minutes. Keep  
25 going, talk about something else. We will get the transcript

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1 to you or bring you out to hear it as fast as we can.

2 You will have all of the exhibits that were admitted  
3 into evidence in the jury room, and you will have a way to play  
4 the tapes. And one of the few things that you can talk to  
5 Mr. O'Neill about is how to make the machine work. But if you  
6 want to look at or listen to any of the tapes, you can do that.

7 And you'll have the charge. Those of you who have  
8 been jurors in state court will probably be thrilled to learn  
9 that. I'm sending it back because jurors have told me over and  
10 over again that they find it helpful. But if you are confused  
11 about an instruction, please send out a note and ask me for  
12 clarification. I have nothing better to do until you reach a  
13 verdict than help you in any way I possibly can. Can't give  
14 you a lot of help, can't help you find the facts, but I can  
15 certainly try to clarify any unclear instructions of law.  
16 Don't think that because this is going back with you that you  
17 can't ask me for clarification. You can ask me for  
18 clarification, and I will give it to you.

19 Now, you will have in the jury room a verdict sheet.  
20 It will ask you how you find the defendant on each count,  
21 guilty or not guilty. You will fill out the verdict sheet as  
22 you deliberate on each count. At the end of your  
23 deliberations, you will have the foreperson sign it. You will  
24 put the date on it, and you will send out a note. And the note  
25 will say: "We have reached a verdict." That is what the note

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Charge

1 will say. Shouldn't say anything else. We will gather and we  
2 will listen to your verdict.

3 OK. I need to see counsel at sidebar.

4 (At sidebar)

5 MR. BRAFMAN: Your Honor, I think we agree that the  
6 tapes and the transcripts will go in.

7 THE COURT: Yes, they will.

8 MR. BRAFMAN: OK.

9 MR. SOLOWIEJCZYK: Your Honor, just one very minor  
10 thing. On Count Three, conspiracy, the first element --

11 THE COURT: What?

12 MR. SOLOWIEJCZYK: -- I think it's page 59 of what I  
13 have.

14 THE COURT: That's close. OK. Here.

15 MR. SOLOWIEJCZYK: It says Count One instead of Count  
16 Three.

17 THE COURT: Oh.

18 MR. SOLOWIEJCZYK: I just caught that.

19 THE COURT: Thank you. I was catching things, but --

20 MR. SOLOWIEJCZYK: That's it.

21 MR. BRAFMAN: Your Honor, we have only the objections  
22 we've previously preserved.

23 THE COURT: And you have preserved them.

24 I need initials on this.

25 MR. BRAFMAN: Thank you.

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1 THE LAW CLERK: Take that with you. Look it over;  
2 make sure there are no errors.

3 (In open court; jury present)

4 THE COURT: Ladies and gentlemen, deliberate only when  
5 you are all -- first, Mr. O'Neill, could you take the  
6 alternates back in the jury room to gather their belongings,  
7 also their lunch.

8 Ladies and gentlemen, deliberate only when you're all  
9 together in the room. The reason for that is you never know  
10 when somebody is going to say the thing that will cause the  
11 penny to drop, OK. So just deliberate when you're together in  
12 the room.

13 No smoking in the jury room. I think you know that.  
14 If we have someone who needs to smoke or if you decide that you  
15 need to get away from each other, do me a favor, do not simply  
16 walk out of the jury room. That too only happened once. It  
17 was the worst day of my life. We could not find the jurors.  
18 It's like the ants got out of the ant farm. It was terrible.  
19 Send out a note, knock on the door, there will be a court  
20 security officer outside, and we will arrange for you to take a  
21 break. We will do that.

22 All right. There is my court security officer. Sir,  
23 would you come up and be sworn.

24 (Marshal sworn)

25 THE COURT: Thank you. Great.

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1 Ladies and gentlemen, you may now discuss the case and  
2 make up your mind. You also get lunch.

3 (At 12:45 p.m., the jury retired to deliberate)

4 THE COURT: You can tell that I have not frequently  
5 charged tax cases because I have not had an opportunity to  
6 whack down that charge. I will make that a priority item.

7 OK. We need to make absolutely sure that we have all  
8 the exhibits, including the transcripts, everything, because  
9 Jim will say: This is it. It's going back in. I don't want  
10 any screw-ups. So somebody from each team needs to be  
11 responsible for making sure that only the admitted exhibits go  
12 back.

13 MR. WIRSHBA: Yes, your Honor.

14 THE COURT: We'll send the verdict sheet back.

15 MR. BRAFMAN: Your Honor, we've all initialed it.

16 THE COURT: Thank you.

17 We'll send a cleaned-up copy of the charge back. I  
18 was feeding Jim pages as I was finding typos, two defendants,  
19 and things like that. We'll let the alternates stick around  
20 until the middle of the afternoon. Make sure that nobody has a  
21 heart attack.

22 OK. You guys get some lunch.

23 MR. BRAFMAN: Your Honor, can we have at least an hour  
24 before we have to come back? Not leaving the building, I'm  
25 just saying.



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1 THE COURT: Yes. I have to go to a security committee  
2 meeting, Mr. Brafman.

3 MR. BRAFMAN: Thank you.

4 MR. SOLOWIEJCZYK: Should we leave our cell phone  
5 numbers for Mr. O'Neill?

6 THE COURT: Wait. Don't leave until he comes back.  
7 He's in charge now. He's the boss now. I cease to be the  
8 boss.

9 (Recess pending verdict)

10 (Jury not present)

11 THE LAW CLERK: There is a note judge. It's Court  
12 Exhibit 1.

13 THE COURT: We, the jury -- the third element, Count  
14 Two, that's at page 36 of the charge. "Property,  
15 clarification, does it mean only vehicles or includes money?"  
16 Answer: Includes money.

17 Bring out the jury.

18 MR. BRAFMAN: Note the count is entitled Theft of  
19 Funds.

20 THE COURT: I'm not going to tell them that, but  
21 you're right, Mr. Brafman.

22 Then we'll bring the alternates in, and we'll let them  
23 go.

24 (At 3:56 p.m., jury returns to the courtroom)

25 THE COURT: This will be a quick trip out, but I

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1 thought you might like to get out of the room for a minute.

2 JUROR: Yes.

3 THE COURT: We have your note, and it's a short note.

4 "Property, clarification, does it mean only vehicles  
5 or includes money?"

6 Short answer: Includes money. OK. That's the short  
7 answer. All right. We all agree that that's the answer.

8 JUROR: OK. Thanks.

9 THE COURT: Back you go.

10 (At 3:58 p.m., jury retired to continue deliberations)

11  
12 THE COURT: It's like contracts, Mr. Brafman, where  
13 the headers aren't part of the contract.

14 MR. BRAFMAN: Right.

15 THE COURT: I guess the headers aren't part of the  
16 charge.

17 OK. We're going to get the alternates.

18 (Alternate jurors present)

19 THE CLERK: Alternate jurors are entering.

20 Just have a seat in the front row. Slide all the way  
21 up.

22 THE COURT: Hi, guys.

23 Hi. Nobody's had a heart attack in the last few  
24 hours, so we're going to let you go. One thing that I'll ask  
25 is that, for tonight anyway, don't discuss the case, OK? Abide

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1 by the usual rules. It's theoretically possible, though I  
2 rarely do this, but it's theoretically possible, that someone  
3 could get a call tomorrow, but we know where to reach you.

4 So you're more or less back to your normal lives. I  
5 can't thank you enough for having taken two weeks out of your  
6 lives to sit as alternates, which is a very frustrating thing  
7 to do, I know, because you end up not deliberating, but it's an  
8 important thing and particularly during the winter months.  
9 This is a rare wintery trial for me when somebody has not  
10 gotten sick. It's really been a long time since I haven't had  
11 to use alternates on a two-week trial in the months of bad  
12 weather and illness.

13 So I'm grateful to you all. I thank you very, very  
14 much for your service, and you are conditionally free to go.  
15 All right.

16 (Alternate jurors excused)

17 THE COURT: That said, I never call jurors back. I'm  
18 the queen of 11-person verdicts, jury verdicts.

19 OK. We'll give them another hour, hour 15 minutes,  
20 something like that. All right.

21 MR. WIRSHBA: Your Honor, do you like to reconvene at  
22 the end of the day?

23 THE COURT: As in do I want you here when I send the  
24 jurors home? I never want to be alone with the jurors.

25 MR. WIRSHBA: Yes, ma'am.

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1 (Recess pending verdict)

2 (Jury not present)

3 THE COURT: OK. Time to end things for the day.

4 Just so you all know, I have a TRO hearing on at 10:00  
5 tomorrow morning, the annual holiday TRO. So just be around  
6 and available by phone.

7 MR. BRAFMAN: What time will you be bringing them back  
8 in? 9:30?

9 THE COURT: 9:30, but we don't convene first. They  
10 can just get to work.

11 (At 5:05 p.m., jury present)

12 THE COURT: OK. One left?

13 THE LAW CLERK: Still one more, Judge.

14 THE COURT: That's true. All this so I can say good  
15 night.

16 So everybody needs to go home and get a good night's  
17 sleep, and here's how it works tomorrow: You get in. As soon  
18 as all 12 of you are in, which I hope will be real soon after  
19 9:30, just knock on the door and say that you're all there and  
20 then start deliberating. The lunch order form will be in  
21 there. I really apologize for this lunch thing. This is bad,  
22 it's really bad. All I can say, plead in my own defense, is  
23 I'm not the person who made this happen right now, but that's  
24 another story. So we'll get your lunch order. You can hand it  
25 out at some point in the first hour of the morning, and Jim

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1 will take care of it, and then I'm here.

2 Now, I have a hearing tomorrow morning on an  
3 application for emergency relief at 10 a.m. You are my first  
4 priority. They are my second priority, but they don't know  
5 that. So if you send out a note like at 10:15 or 10:20, I'll  
6 be in the middle of that hearing. I'll have to stop that and  
7 reconvene everybody.

8 Don't discuss the case tonight. Why would you want  
9 to? Keep an open mind because you're still talking about these  
10 things. And I will see you sometime tomorrow when you tell me  
11 you want to be seen. OK.

12 (Adjourned to December 19, 2018, at 9:30 a.m.)  
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